

SERVICE DATE - LATE RELEASE DECEMBER 8, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-573X¹

TRINIDAD RAILWAY, INC.—ABANDONMENT EXEMPTION—
IN LAS ANIMAS COUNTY, CO

Decided: December 8, 2000

Trinidad Railway, Inc. (Trinidad) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Trackage Rights for Trinidad to abandon, and The Burlington Northern and Santa Fe Railway Company (BNSF) and Union Pacific Railroad Company (UP) to discontinue trackage rights over, an approximately 30.0-mile line of railroad. The line extends from milepost 2.0 at Jensen (west of Trinidad) to the end of the line at the former New Elk Mine at milepost 30.0 (east of Stonewall), in Las Animas County, CO.² Notice of the exemption was served and published in the Federal Register on September 21, 2000 (65 FR 57239-40). Under 49 CFR 1152.50(d)(3), the exemption was scheduled to become effective on October 21, 2000. However, a formal expression of intent to file an offer of financial assistance (OFA) was timely filed by Rail Ventures, Inc. (Rail Ventures), to purchase the entire line. That filing stayed the effective date of the exemption until October 31, 2000. Rail Ventures also requested Trinidad to provide the financial data and information prescribed in 49 CFR 1152.27(a).

On October 17, 2000, Rail Ventures filed a request to toll the 30-day period for submitting its OFA, as it had not been provided necessary financial data and information. By decision served October 20, 2000, the Board directed Trinidad to provide Rail Ventures with the requested information, granted Rail Ventures an extension until November 20, 2000, to file its OFA, and further postponed the effective date of the exemption until November 30, 2000. On November 17, 2000, Rail Ventures filed a second request for an additional 30 days to file its OFA, noting that it had received the requested information on November 15, 2000. By decision served November 21, 2000, the Board extended the time period for Rail Ventures to file its OFA

¹ Decisions issued in this proceeding on September 1, 2000, and September 21, 2000, also embraced STB Docket No. AB-6 (Sub-No. 388X), The Burlington Northern and Santa Fe Railway Company—Discontinuance of Trackage Rights Exemption—in Las Animas County, CO, and STB Docket No. AB-33 (Sub-No. 160X), Union Pacific Railroad Company—Discontinuance of Trackage Rights Exemption—in Las Animas County, CO.

² As Trinidad has retained, and BNSF and UP continue to operate over, the first 2 miles of Trinidad's line, there is a discrepancy in the record as to the length of the subject line.

to December 5, 2000, and postponed the effective date of the exemption until December 15, 2000.

On December 5, 2000, Rail Ventures timely filed an OFA under 49 U.S.C. 10904 and 49 CFR 1152.27(c) to purchase the entire line for \$2.5 million.³ Also on December 5, Kern Valley Railroad Company (KVR) filed a petition to reject the OFA.⁴ On December 7, 2000, Rails to Trails Conservancy (RTC) filed a motion to dismiss the OFA.⁵

An OFA to acquire a line for continued rail service need not be detailed, but an offeror must show that it is financially responsible and that the offer is reasonable. See Conrail Abandonments Under NERSA, 365 I.C.C. 472 (1981).

Rail Ventures states that it intends to resume freight rail operations over the subject line and to commence an aggressive marketing effort to restore the line to economic viability. Offeror avers that it has met extensively with companies operating in south central Colorado and with groups and agencies interested in economic development in and around Trinidad. Rail Ventures specifically discusses various rail traffic opportunities it deems promising. Offeror states that it has tentatively arranged venture capital financing through Regatta Capital, and that it has also lined up alternative financing through United Railroad Service Company, a railroad construction services company.

KVR and RTC challenge Rail Ventures' proposal, characterizing its traffic sources as highly speculative. They also question Rail Ventures' motives, claiming that offeror intends to initiate a passenger excursion operation, which is outside Board jurisdiction and not the proper subject of an OFA. Finally, KVR and RTC challenge the sufficiency of offeror's financing.

³ Rail Ventures' pleading embraces a petition to revoke a notice of exemption filed in a related proceeding, Kern Valley Railroad Company—Acquisition and Operation Exemption—Trinidad Railway, Inc., STB Finance Docket No. 33956 (served and published November 21, 2000). The embraced petition will be addressed in a separate decision.

⁴ KVR was granted leave to intervene in this proceeding in the November 21 decision. While KVR filed its petition to reject in STB Finance Docket No. 33956, administrative notice of the pleading will be taken.

⁵ In the October 20 decision, the Board noted that RTC had requested a notice of interim trail use (NITU), but issuance of the NITU was held in abeyance pending completion of the OFA process. RTC's motion to dismiss embraces an alternative motion to hold the OFA process in abeyance, and a motion to order maintenance of the status quo, pending the disposition of pleadings filed in STB Finance Docket No. 33956. In view of the action taken here, the motions will be denied.

Rail Ventures has adequately voiced its intentions and described its efforts and proposals for fulfilling those intentions. Rail passenger service and rail freight service are not mutually exclusive. Offeror has arranged financing it believes adequate. Based on the information provided, I find that Rail Ventures is financially responsible.⁶

Rail Ventures' offer is less than the \$4.14 million valuation of KVR. Consistent with 49 U.S.C. 10904(c) and 49 CFR 1152.27(c)(1)(ii)(C), however, Rail Ventures has explained the basis for the differences between the estimates. Moreover, Rail Ventures shows that, in July 2000, L. B. Foster Co. offered Trinidad \$2.28 million for the line.

Because Rail Ventures, a financially responsible entity, has offered financial assistance, the effective date of the exemption authorizing abandonment of the line will be postponed.

Any person filing a request to set terms and conditions must pay the requisite filing fee, set forth at 49 CFR 1002.2(f)(26), which currently is \$14,800. An original and 10 copies of the request should be submitted along with the fee, in an envelope bearing the docket number of this proceeding, along with the words "Attention: Application Unit, Request to Set Terms and Conditions" in the lower left hand corner.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. KVR's petition to reject the OFA and RTC's motion to dismiss the OFA and embraced motions are denied.
2. The effective date of the abandonment exemption is postponed in order to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.
3. If the buyer and seller cannot agree on a purchase price of the line, either party may request the Board to establish the terms and conditions of the purchase price on or before January 4, 2001. If no agreement is reached and no request is submitted by that date, the Board will serve a decision vacating this decision and allowing the abandonment exemption to become effective, subject to trail use or other appropriate conditions.

⁶ For the various reasons discussed above, the KVR petition to reject the OFA and the RTC motion to dismiss the OFA will be denied.

4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary